FILE COPY

Office Supreme Court
FILED
FEB 6 19
CHARLES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 746

THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, AND THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,
Appellants,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, JOHN W. BRICKER, ATTORNEY GENERAL OF THE STATE OF OHIO, AND PITTSBURGH COAL COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

FREDERIC D. MCKENNEY,
GUERNSEY ORCUTT,
WILLIS T. PIERSON,
LEO P. DAY,
JOHN J. FITZPATRICK,
Counsel for Appellants.

INDEX.

SUBJECT INDEX.

	Page
Statement as to jurisdiction	1
Nature of the case and rulings below	1
Date of the judgment sought to be reviewed and date of application for appeal	3

STATUTES CITED.

Act of Congress of June 18, 1910, c. 309, Sec. 17, 36 Stat. 557	3
Act of Congress of March 3, 1911, c. 231, Sec. 226, 36 Stat. 1162	3
Act of Congress of March 4, 1913, c. 160, 37 Stat. 1013	3
Act of Congress of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938; Sec. 266 Judicial Code, as amended	3
Constitution of the United States, Article 1, Sec. 8, Par. 3	2
Article XIV, Sec 1	2
Interstate Commerce Act	4
United States Code, Title 28, Section 380	2, 3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 746

THE PENNSYLVANIA RAILROAD COMPANY, ERIE RAILROAD COMPANY; THE BALTIMORE AND OHIO RAILROAD COMPANY, AND THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,

Appellants,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, JOHN W. BRICKER, ATTORNEY GENERAL OF THE STATE OF OHIO, AND PITTSBURGH COAL COMPANY,

Appellees.

SEPARATE STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States appellants here submit their separate typewritten statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon Appeal to review the decree of the United States District Court for the Southern District of Ohio, Eastern Division, which holds the Order of The Public Utilities Commission of Ohio entered on the 26th day of March, 1935, in a certain proceeding entitled *The Youngstown and Suburban Railway Com-*

pany v. *The Pennsylvania Railroad Company and Erie Railroad Company*, No. 9113, to be lawful and proper:

The instant suit was brought in said District Court of the United States for the Southern District of Ohio, Eastern Division, by said The Pennsylvania Railroad Company and Erie Railroad Company against The Public Utilities Commission of Ohio and John W. Bricker, Attorney General of said State, to enjoin, set aside and annul said above identified order of said Commission as constituting an undue and direct burden on and in undue interference with interstate commerce, in violation of Paragraph 3, Section 8, of Article I, of the Constitution of the United States and as contrary to applicable provisions of the Act of The Congress of the United States known as the Act to Regulate Commerce (as Amended; also because of its impingements upon the rights of the complainants in that its enforcement would necessarily result in depriving said complainants of their property without due process and otherwise deny to them the equal protection of law, contrary to the prohibitions of Section 1, Article XIV, of the Constitution of the United States; and, further, that said order so complained of, had been issued without authority of any applicable law, and was arbitrary in that it was designed to compel performance by complainants of certain services in connection with movements of interstate traffic under rules, regulations and rates prescribed by said The Public Utilities Commission of Ohio, applicable to intrastate commerce in said State of Ohio;

That complainants' application in such connection was duly presented to the United States District Judge for said Southern District of Ohio, Eastern Division, who called to his assistance to hear and determine said application two other Judges, viz., Allen and Nevin as so required to do by provisions of Section 380 of Title 28, United States Code, and said United States District Court so con-

stituted as a statutory or three-judge court, heard argument and passed its decree denying the prayers of the complainants' bill of complaint and dismissing same at complainants' cost, said decree being now complained of and sought to be brought under review and reversed by petition for appeal herewith presented:

Acts of June 18, 1910, c. 309, Sec. 17, 36 Stat. 557; March 3, 1911, c. 231, Sec. 226, 36 Stat. 1162; March 4, 1913, c. 160, 37 Stat. 1013; February 13, 1925, c. 229, Sec. 1, 43 Stat. 938; Sec. 266 Judicial Code, as Amended.

1. By express provisions of said Sec. 380 of Title 28, U. S. Code, statutory jurisdiction is conferred upon this Court to review by direct appeal the judgments, including the judgment in the instant case, of such specially constituted District Court.

2. The Judgment complained of and to be reviewed was passed and entered March 11th, 1935.

3. Application for allowance of Appeal was presented to Mr. Justice James Clark McReynolds, Associate Justice assigned to the Sixth Judicial Circuit on December 31, 1935, and allowed the same date.

4. The order of The Public Utilities Commission of Ohio in terms required complaining carriers by steam railroad according as they participate in the transportation to cease and desist from omitting, neglecting or refusing without unreasonable delay to transfer, switch and deliver to named consignees of the traffic in Youngstown, certain indicated car loads of bituminous coal and other carloads of such coal in the future at the Ohio intrastate rates or charges applicable for the switching of such traffic in Youngstown and contemporaneously in effect, which coals had been or

hereafter might be delivered at Negley, Ohio, and road-hauled into Youngstown by the Youngstown and Suburban Railroad for such or similar delivery to consignees, it having been and still being contended by complainants, appellants here, that in the circumstance fully disclosed by the record of the proceedings had in the cause, the traffic in question was and is in truth and fact interstate traffic, which properly took and properly should be transferred, switched and delivered on the payment of legal rates prescribed in tariffs duly published and on file with the Interstate Commerce Commission, by which said interstate tariff rates these complainants and intervenors, appellants here, are severally and individually bound.

5. The judgment of the District Court complained of and to be reviewed on this appeal improperly and ill-advisedly upheld such order of the Public Utilities Commission of Ohio, contrary to the provisions of the Act to Regulate Commerce, as Amended, as same in principle has been construed and applied by this honorable Court in many decided cases, no one of which factually is "on all fours" with the instant case.

Respectfully submitted,

(Signed) FREDERIC D. MCKENNEY,
GUERNSEY ORCUTT,
For the Pennsylvania Railroad Co.
WILLIS T. PIERSON,
For Erie Railroad Company.
LEO. P. DAY,
For the Pittsburgh & Lake Erie Railroad Company.
JOHN J. FITZPATRICK,
For the Baltimore and Ohio Railroad Company.

(7413-C)